HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.5595 OF 2007

Between:

M/s. Uppal Industries Association (Regd.No.938 of 1975),
K-2, Plot No.9, Opp. Parke Davis (India) Ltd.,
I.D.A. Uppal, Hyderabad, rep., by the Secretary-in-charge,
Mr. S.V. Sudheer, S/o Parthasarathy Rao

…Petitioner

AND

Government of Andhra Pradesh,
A.P. Secretariat, Hyderabad,
Rep., by the Chief Secretary and 11 others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri T.V.L. Narasimha Rao

Counsel for respondent No.1 : Government Pleader for General Administration

Counsel for respondent No.3 : Government Pleader for Industries and Commerce

Counsel for respondent No.12 : Shri S. Ravi

September 6, 2007

Per G.S.SINGHVI, C.J.

Whether the land forming part of Industrial Development Area, Uppal, Hyderabad (hereinafter described as 'IDA, Uppal'), which, according to the petitioner, is classified as 'Pharma Cluster' can be utilized for development of Information Technology parks and allotted/transferred to Information Technology related industries is the question, which arises for determination in this petition filed by M/s. Uppal Industries Association for grant of a declaration that the action of IT and C Department, Government of Andhra Pradesh to convert the land forming part of 'Pharma Cluster' into Service Sector Venture in the name of establishing ICT Parks. The petitioner has further prayed for quashing the transfer of land of respondent No.10 – M/s. Pfizer Ltd. in favour of respondent No.11 – M/s. Topnotch Infrastructure Ltd.

The petitioner is a society registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli. The industrial units operating in IDA, Uppal are said to be its members. The grievance of the petitioner is that in the garb of implementing the policy contained in G.O.Ms.No.11, IT & C Department, dated 21-3-2005, the official respondents are converting the land, which constitutes part of 'Pharma Cluster', IDA, Uppal, for activities relating to Information Technology industries and for establishing I.T. parks.

In the affidavit filed by Sri S.V. Sudheer, Secretary In-charge of the petitioner association, it has been averred that the industrial area has been carved out in accordance with the provisions contained in the Andhra Pradesh Urban Areas Development Act, 1975 and the rules framed thereunder and that without changing the land use, the State Government and its functionaries are allowing the utilisation of industrial land for development of Information Technology industries and other ancillary purposes. According to Sri S.V. Sudheer, if the

land earmarked/categorized as 'Pharma Cluster' is utilised for I.T. industries, the members of the petitioner will suffer irreparable injury and their fundamental rights guaranteed under Articles 14 and 21 will stand violated and they will be deprived of the constitutional safeguards under Articles 37, 47, 48-A, 51-A(g), 51-A(i) and 300-A of the Constitution.

In the counter affidavit filed by Sri S.K. Joshi, Secretary to Government, Information Technology Department, it has been averred that allotment of land to Information Technology related industries is in consonance with the policy decision taken by the government to develop the said industry. In paragraphs 6, 10, 12, 13, 18, 25 and 26 of his affidavit, Sri S.K. Joshi has averred as under:

"6. The Government of A.P. has taken a policy decision to develop IT (Information Technology) Industry and issued G.O.Ms.No.11, IT & Communications Department, dated 21-3-2005. The object of the policy decision taken by the Government is "to transform the State into a knowledge society and make available the benefits of information technology to all citizens, especially those in rural areas and living in poverty" and "wishes to become leading destination for investments in Information and Communication Technology (ICT) and a major player in the information economy." The Government announced ICT policy first in the year 1999 and keeping in view emerging situation had amended from time to time for attracting the investments into the State. As per Clause 34 of the said G.O, IT activity is defined as Industry and the definition of IT industry includes "Hardware Manufacturing (IT Hardware & Electronics) and IT/ITES Units/ companies, IT/ITES companies includes IT software and IT services and IT enabled services/BPO/Animation and gaming."

10. Realising the need & importance of the Information Technology Industry as a prime growth engine & spinner of the economic activity, in order to achieve accelerated IT Industrial growth not only for the leap frog balanced and overall socio economic development but also for providing gainful employment to the educated youth of the State, Government of Andhra Pradesh, basing on the prerogative of the Government of India, created a separate and exclusive Department vide G.O.Ms.No.133, dated 10-4-2000 under the nomenclature of "Information Technology & Communications Department" (hereinafter referred as IT&C Dept), inter alia, with the following objectives:-

1. Formulation of policies on all aspects connected to the development and use of Information Technology in the State.

2. Promotion of Information Technology industry in Andhra Pradesh.
3. Catalyze Industry – Academia collaboration.
4. Promote new technologies that improve quality of life.
5. Information Technology enabled services.

12. In order to achieve the objectives & goals set out in the said ICT Policy, this Department has evolved the following strategies to promote and percolate the Information Technology Industry to the last mile of the State:

- To achieve targeted employment & experts
- Attract new ICT large companies/Multi National Corporations that do not have presence at present in Hyderabad or India
- Provide Scope & Opportunities for growth for the existing companies
- Create adequate built up space/infrastructure, through promotion of integrated IT Parks/IT SEZs
- Provide quality manpower
- Focus on the consistent & sustained growth Small and Medium Enterprise (SME) IT industry.

13. Due to the implementation of above mentioned initiatives by the 7th respondent, Andhra Pradesh has maintained the lead position in IT growth rate in the country. As per the Software Technology Parks of India (STPI) statistics, in the year 2004-05, the growth rate was of the order of 64.5% as against the national average of 34% with an Export Turnover of Rs.8270 crores. Again, in the year 2005-06, the growth rate stood at 51%, against national average of 36%, having recorded an export turnover of Rs.12521 crores. This financial year too i.e. for 2006-2007, IT in AP is slated to achieve more than 40% growth rate with an estimated turnover of Rs.17529 crores, as against the anticipated national average of about 30%. On the other hand, total IT employment created during 2004-05 to 2006-07, is estimated to be of the order of 100660 with the investments made by the IT industry so far projected to be about RS.4969 crores. AP State contributes to more than 12% of the share in national exports in IT Sector and ranks 4th position in the country. IT Sector tops in earning of export revenues with 53.03% share out of the total exports from the AP. Government has attracted major Multi National Corporations and Home Grown Information Technology companies such as Microsoft, Oracle, Motorala, GE, HSBC, Google, Deloitte, IBM, CSC, Amazon, UBS, Bank of America, Dell, Convergys, Celetronix, HCL, Wipro, Infosys, Satyam, Polaris, Cypress Semiconductors, Adaptec, ADP, Kanbay, Qualcom, Accenture, Computer Associates, Synopsis, TCS, Franklin Templeton, Cognizant and

many others to set up their operations in the State.

18. As per ICT Policy all integrated IT Parks/Clusters will have to be developed in such a manner that while 60% of the net developable/usable area is stipulated for IT office space, balance 40% of the net developable/usable area for housing/club house/ Recreation Centre, Shopping Centre, a good school and other support activities and the service areas like water supply system, drainage and sewerage, electric power, other utilities etc.

25. Moreover, as per Clause 35 of ICT Policy, the IT/ITES industry and related activities are granted general permission and are exempt from the purview of the AP Pollution Control Act and to that effect Government at Energy, Forest & Environment Department issued G.O.Ms.No.161, dated 15-10-1998 exempting IT industry from obtaining NOC from the Pollution Control Board.

26. Further, there is no prohibition under any law for any individual or statutorily incorporated firm or company to develop an IT Park in his/their own lands, as per the prescribed norms and the petitioner has raised any valid or justifiable grounds to substantiate his averments, which merit consideration of this Hon'ble Court. As such, in the present case, it is not the conversion of land usage as alleged by the petitioner but putting to effective use of unutilized land for a productive purpose and generation of economic activity in the changed economic scenario, through declaration as IT Park, as per the policy of the Government. More so, development of IT Park does not involve any pollution angle as is in the case of other processing sectors, especially sectors like Pharma Cluster, as is alleged by the petitioner. As such, it is not correct to say that the policy document is "prospective in operation". Necessary documentary evidence is filed in this regard."

In a separate affidavit filed by Sri Ch. Appa Rao, who is one of the Directors of M/s. Topnotch Infrastructure Ltd., it has been averred that the I.T. Park and Information Technology related industries are being set up in IDA, Uppal in accordance with the policy decision taken by the government and the petitioner and its members cannot take any exception to the policy contained in G.O.Ms.No11, dated 21-3-2005. In paragraph 10 of the affidavit, Sri Ch. Appa Rao has averred that there are several non-pharmaceutical companies in IDA, Uppal and the petitioner association was established with all non-pharmaceutical companies. He has further averred that there is no evidence regarding establishment of 'Pharma Cluster' and that even if

the area has been declared as 'Pharma Cluster', there is no prohibition against the establishment of I.T. park by respondent No.11.

In the counter affidavit filed on behalf of respondent No.12, detailed averments have been made to highlight the background in which the land originally allotted to M/s. Warner Hindustan Ltd., which was later on converted as M/s. Pfizer Ltd., was transferred to respondent No.11.

We have heard learned counsel for the parties and perused the record. In our opinion, the writ petition is liable to be dismissed because the petitioner has failed to establish that allotment, transfer and/or utilisation of the land in IDA, Uppal for Information Technology related industries or for setting up I.T. Parks is violative of the provisions of the Constitution or any legislative instrument or delegated legislation or that the implementation of the policy contained in G.O.Ms.No.11, dated 21-3-2005 has resulted in violation of any constitutional or legal rights of its members.

Although articulation of the prayer clause of the writ petition suggests that the transfer of land by respondent No.10 to respondent No.11 is contrary to the provisions of the Constitution, but the petitioner has not placed any material before the Court to warrant judicial review of the policy framed by the Government to develop I.T. industries in the State. The petitioner's assertion that the land forming part of 'Pharma Cluster' is being allotted for I.T. Parks or is being utilised by the Information Technology industries for residential and other purposes is clearly misconceived and is liable to be rejected because no tangible evidence has been produced before the Court to show that any part of IDA, Uppal was earmarked or declared as 'Pharma Cluster' or any special reservation was made for industries engaged in manufacture of pharmaceuticals. In this context, it is also significant to mention that the petitioner has not controverted the categorical averments contained in paragraph 10 of the affidavit of Sri Ch. Appa Rao that there are several non-pharmaceutical companies in IDA, Uppal, which

are members of the petitioner association.

We are further of the view that the policy decision taken by the State Government to set up I.T. parks and facilitate the setting up of I.T. related industries in IDA, Uppal cannot be termed as illegal or violative of any legal or fundamental right of the members of the petitioner association. This policy is intended to garner maximum benefit of information technology revolution in the country for the people of the State. It is also a necessary concomitant of the policy being pursued by the Government for overall industrial development of the State and such decision cannot be nullified except on the ground of violation of any constitutional or legal provisions, which the petitioner has failed to establish in the present case.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP Nos.7148 and 7149 of 2007 filed by the petitioner are also dismissed.

G.S. SINGHVI, CJ

6th September, 2007

C.V. NAGARJUNA REDDY, J

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